



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 12-201; 13-140; 14-92; FCC 14-129]

Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on two regulatory fee issues. First, the Commission seeks comment on methods to ensure and encourage compliance with a new toll free regulatory fee requirement, and the appropriate procedures necessary to enforce non-payment of toll free regulatory fees. And second, the Commission seeks comment on a proposal to adopt a new direct broadcast satellite (DBS) regulatory fee category based on Media Bureau FTEs (Full-Time Equivalents) who perform work related to DBS regulatees.

DATES: Submit comments on [INSERT DATE **30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**], and reply comments on [INSERT DATE **60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by MD Docket No. 14-92, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.
- E-mail: ecfs@fcc.gov. Include MD Docket No. 14-92 in the subject line of the message.
- Mail: Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 14-129, MD Docket No. 14-92, MD Docket No. 13-140, and MD Docket No. 12-201, adopted on August 29, 2014 and released on August 29, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

I. PROCEDURAL MATTERS

Ex Parte Rules Permit-But-Disclose Proceeding

1. The Further Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

Comment Filing Procedures

2. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates

indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

3. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format ("PDF") at: <http://www.fcc.gov>.

Initial Paperwork Reduction Act

5. This Further Notice of Proposed Rulemaking document solicits possible proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the possible proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Analysis

6. An initial regulatory flexibility analysis ("IRFA") is contained in section III. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on this

Notice of Proposed Rulemaking (NPRM). The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. INTRODUCTION

7. In this Further Notice of Proposed Rulemaking, the Commission seeks comment on two regulatory fee issues: (1) methods to ensure and encourage compliance with a new toll free regulatory fee requirement, and the appropriate procedures necessary to enforce non-payment of toll free regulatory fees, and (2) a proposal to adopt a new direct broadcast satellite (DBS) regulatory fee category based on Media Bureau FTEs who perform work related to DBS regulatees.

A. Toll Free Numbers

8. In the FY 2014 Report and Order, the Commission adopted a regulatory fee category for toll free numbers.¹ The Commission agreed with the commenters² that additional development in the record is needed regarding the appropriate procedures for enforcement for non-payment such as revocation of numbers or decertifying a RespOrg.

9. Therefore, the Commission seeks comment on what procedures we may use to enforce a RespOrg's obligation to pay any regulatory fees assessed on toll free numbers. For instance, section 9(c)(3) of the Act states that in lieu of penalties and dismissals, "the Commission may revoke any instrument of authorization held by an entity that has failed to make payment of a regulatory fee assessed pursuant to the section."³ The Commission seeks comment on whether section 9(c)(3) of the Act permits the Commission to classify toll free numbers as "instruments of authorizations," thereby allowing reclamation of those numbers if regulatory fees are not paid. The Commission also invites input on whether it may decertify (or direct SMS/800 to decertify) a RespOrg in instances of delinquent regulatory fee payments. Does the Commission have authority under section 9(c) to revoke a certification granted

¹ 79 FR 54190 (September 11, 2014) at paras. 28-31.

² AT&T Comments at 5; US Telecom Reply Comments at 5; Bandwidth Reply Comments at 1.

³ 47 U.S.C. 159(c)(3). The Commission notes that under section 9(c)(1) it has authority to issue penalties for late payment.

by a third party, such as the SMS/800 Database Administrator? If so, would this certification be an “instrument of authorization” under section 9(c) of the Act that could be revoked if the RespOrg failed to pay regulatory fees? For instance, we might treat an SMS/800, Inc. certification as sufficient (though perhaps not necessary) evidence that an entity is entitled to an FCC authorization to operate as a RespOrg. Then, in the event of non-payment of regulatory fees, the Commission might revoke the FCC-issued authorization needed for the entity to serve as a RespOrg. The Commission seeks comment on this and any other possible approaches. In addition, the Commission also seeks comment on whether there are other statutory approaches for revoking such certification in the event of nonpayment. And finally, the Commission seeks comment on whether a RespOrg’s application, either for certification by SMS/800, Inc. or to receive toll free numbers filed with SMS/800 Inc., can be delayed or denied, thus preventing either temporary or permanent access to the toll free database to reserve toll free numbers if regulatory fees are delinquent.⁴ If not, should the Commission require that a separate application be submitted for the use of toll free numbers and payment of regulatory fees?

B. Direct Broadcast Satellites (DBS)

10. In this Further NPRM, the Commission proposes to adopt a new fee category for DBS, based on the Media Bureau FTEs that perform work related to these regulatees. DBS providers are multichannel video programming distributors (MVPDs), pursuant to section 602(13) of the Act.⁵ These operators of U.S.-licensed geostationary space stations used to provide one-way subscription television service to consumers in the United States pay a regulatory fee under the category “Space Station (Geostationary Orbit)” in the regulatory fee schedule. DBS providers are also similar to cable operators and IPTV providers because DBS providers offer multi-channel video programming to end-users. Despite this similarity, DBS providers do not pay the per-subscriber regulatory fee assessed on cable operators and IPTV providers based on Media Bureau FTE regulation.

⁴ Currently the SMS/800, Inc. tariff has a process in place to suspend or discontinue service to a RespOrg for nonpayment of SMS/800 fees. See 800 Service Management System (SMS) Functions Tariff, FCC Tariff No. 1 at section 2.1.8, available at <http://www.sms800.com/Controls/NAC/Tariff.aspx#>.

⁵ 47 U.S.C. 522(13).

11. In the FY 2014 NPRM, the Commission sought comment on “whether regulatory fees paid by DBS providers should be included in the cable television and IPTV category and assessed in the same manner as cable television system operators.”⁶ It noted that DBS providers currently pay less than nine percent of the regulatory fees they would be assessed if the Commission were to combine these categories (\$2,052,450 vs. \$23,120,000) and required DBS to pay the same rate as cable television and IPTV.⁷ Various commenters have supported this proposal⁸ arguing that assessing regulatory fees on DBS providers is warranted because Media Bureau FTEs provide similar regulatory work to both cable operators and DBS providers.⁹ For example, DBS providers and cable operators are permitted to file program access complaints¹⁰ and complaints seeking relief under the retransmission consent good faith rules;¹¹ and DBS providers are also required to comply with Media Bureau oversight and regulation such as Commercial Advertisement Loudness Mitigation Act (CALM Act),¹² the Twenty-First Century Video Accessibility Act (CVAA),¹³ as well as the closed captioning and video description rules.¹⁴ ACA argues that because DBS providers do not pay fees to cover the Media Bureau FTE expenses, the Media Bureau costs are shifted entirely to the entities that do pay regulatory fees based on Media Bureau FTEs.¹⁵ DBS providers have opposed this proposal; arguing that they are not cable television operators and they are not subject to all of the regulations historically imposed on the cable industry by the Media Bureau; instead, their business model is based on satellite technology and is subject to satellite licensing rules through the

⁶ FY 2014 NPRM, 79 FR 37982 at 37985 at para. 18 (July 3, 2014). The Commission sought comment on this issue in previous NPRMs. See, e.g., FY 2013 NPRM, 78 FR 34612 at 34625 at para. 43 (June 10, 2013); FY 2008 FNPRM, 73 FR 50285 at 50290-50291, paras. 24-25 (August 26, 2008).

⁷ FY 2014 NPRM, 79 FR 37982 at 37991, Table 4.

⁸ See, e.g., ACA Comments at 3-9; ITTA Comments at 11-12; NCTA Comments at 3-6; NCTA & ACA Reply Comments at 3-11 (“basic principles of fairness and technological neutrality require the Commission to assess [DBS] service providers regulatory fees as part of a . . . fee category that also includes cable operators and IPTV services.”).

⁹ See FY 2014 NPRM, 79 FR 37982 at 37990, para. 48.

¹⁰ 47 U.S.C. 548; 47 CFR 76.1000-1004.

¹¹ 47 U.S.C. sections 325(b)(1), (3)(C)(ii); 47 CFR 76.65(b).

¹² See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, Report and Order, 26 FCC Rcd 17222 (2011).

¹³ 47 U.S.C. 618(b).

¹⁴ 47 CFR Part 79.

¹⁵ ACA Comments at 6.

International Bureau.¹⁶

12. The Commission recognizes that DBS providers are not subject to all of the regulations and requirements imposed on the cable industry.¹⁷ However, as discussed above, there are certain rules that both DBS providers and cable operators are subject to, and Media Bureau FTEs provide the oversight and regulation of the DBS industry in these areas.¹⁸ Last year, the Commission adopted a new category of regulatory fees for IPTV providers and cable television operators reasoning that “assessing regulatory fees on cable television systems, but not on IPTV . . . may place cable providers at a competitive disadvantage,”¹⁹ and noting that there is a “relatively small difference from a regulatory perspective” between IPTV providers and cable operators.²⁰ This Media Bureau FTE involvement and the benefits received by DBS may support adoption of a new fee category. Therefore, the Commission believes that it may be appropriate under section 9 of the Act to recover the costs associated with Media Bureau FTE work.²¹ Accordingly, the Commission proposes to adopt a new fee category to recover the costs incurred by the Media Bureau due to the DBS industry. Alternatively, should Media Bureau FTEs working on DBS issues be assigned to the International Bureau or as indirect FTEs for regulatory fee purposes? The Commission invites comment on the legal and policy implications of such a proposal.

13. Unlike cable television/IPTV, DBS providers already pay regulatory fees based on the oversight of their industry by International Bureau FTEs and do not pay any Media Bureau FTE fees. As a result, the Commission seeks comment on whether DBS providers should pay a regulatory fee under this category at a much lower rate than that for other MVPDs, such as one-tenth of the anticipated revenue if DBS were combined with MVPD, to recognize the International Bureau FTE fees DBS providers will continue to pay as well as the Media Bureau FTEs related to DBS regulation. The

¹⁶ See DIRECTV and DISH Comments at 13-18.

¹⁷ See, e.g., DIRECTV and DISH Comments at 13-17; SIA Comments at 7.

¹⁸ See, e.g., 47 CFR 76.65(b); 76.1000-1004; Part 79; see also Implementation of Commercial Advertisement Loudness Mitigation (CALM) Act, Report and Order, 26 FCC Rcd 17222 (2011); 47 U.S.C. 618(b).

¹⁹ FY 2013 Report and Order, 78 FR 52433 at 52443-52444, para. 35 (August 23, 2013).

²⁰ Id., 78 FR 52433 at 52443, para. 35, footnote 81 (August 23, 2013).

²¹ 47 U.S.C. 159(a)(1).

Commission estimates that this amount would be approximately \$2.1 million.²² We invite comment on the appropriateness of this amount, or whether it should be higher or lower. In assessing this proposal, the Commission also intends to factor in any resulting “rate shock” on DBS providers, the financial impact of such a fee on economic wellbeing of the DBS industry and the customers it serves, and the appropriateness of phasing in any permanent adjustments to our rate structure for DBS. This regulatory fee category, if adopted, would apply to all operators of U.S.-licensed geostationary space stations used to provide one-way subscription television service to consumers in the United States. The Commission seeks comment on whether assessing this fee on the space station operator is an efficient assessment mechanism or if there are alternative mechanisms for assessing a fee on providers of one-way subscription television service to consumers in the United States.

14. Commenters should discuss whether the payment obligations of this new category should increase over time to a larger percentage of the cable television/IPTV rate or if this fee category should be transitioned to a MVPD category together with cable television and IPTV. The Commission invites comment on the appropriateness of eventually adopting a new regulatory fee category that includes DBS, cable operators, and IPTV, all assessed using the same methodology and at the same rate. In doing so, the Commission asks for legal and policy implications of such a combination. The Commission also seeks comment on the time period the DBS providers should have in transitioning into such a fee category, and in what manner, or if they should continue to remain at a lower rate than cable operators and IPTV.

15. If DBS providers are assessed a more significant fee rate (comparable or the same as cable operators and IPTV), commenters should discuss whether they should have an offset or credit for all or a portion of the regulatory fees that they pay based on the International Bureau FTEs.

²² See Table 4 in the FY 2014 NPRM, 79 FR 37982 at 37991, Table 4. If adopted, the regulatory fee rate will be proposed in the annual notice of proposed rulemaking seeking comment on regulatory fees for the upcoming fiscal year.

III. INITIAL REGULATORY FLEXIBILITY ANALYSIS

16. As required by the Regulatory Flexibility Act (RFA),²³ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this FNPRM. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁴ In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.²⁵

A. Need for, and Objectives of, the FNPRM

17. The FNPRM seeks comment regarding the adoption and implementation of creating a new DBS fee category per section 9(b)(3), and how a Responsible Organization (RespOrgs) can be held to their regulatory fee obligation for lack of payment. With respect to establishing a new DBS fee category, the Commission has determined that DBS providers do not qualify as small business entities. With respect to RespOrgs, the Commission has discovered that while it provides oversight for RespOrgs in various numbering plans, it does not assess a regulatory fee for the resources that it expends. Consequently, the Commission has decided to assess a fee on this group of regulatees to ensure equitable access to toll free numbers and to minimize the chance that these toll free numbers are not unjustly controlled. In addition to holding RespOrgs responsible for payment of regulatory fees, the Commission also seeks comment on the extent to which it can revoke an instrument of authorization for failure to pay regulatory fees section 9(c)(3). We invite comment on this topic to better inform the Commission concerning whether and/or how this service should be assessed under our regulatory fee methodology in future years.

²³ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104-121, Title II, 110 Stat. 847 (1996).

²⁴ 5 U.S.C. 603(a).

²⁵ Id.

B. Legal Basis:

18. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.²⁶

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.²⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³⁰

20. **Small Businesses.** Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.³¹

21. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year.

²⁶ 47 U.S.C. 154(i) and (j), 159, and 303(r).

²⁷ 5 U.S.C. 603(b)(3).

²⁸ 5 U.S.C. 601(6).

²⁹ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³⁰ 15 U.S.C. 632.

³¹ See SBA, Office of Advocacy, “Frequently Asked Questions,” http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.

Of this total, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.³² Thus, under this size standard, the majority of firms can be considered small.

22. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³ According to Commission data, census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.³⁴ The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

23. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁵ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³⁶ Of this total, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³⁷ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the FNPRM.

24. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access**

³² See id.

³³ 13 CFR 121.201, NAICS code 517110.

³⁴ See id.

³⁵ 13 CFR 121.201, NAICS code 517110.

³⁶ See Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (September 2010) (Trends in Telephone Service).

³⁷ Id.

Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁸ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³⁹ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.⁴⁰ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴¹ In addition, 72 carriers have reported that they are Other Local Service Providers.⁴² Of this total, 70 have 1,500 or fewer employees and two have more than 1,500 employees.⁴³ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the proposals in this FNPRM.

25. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a small business size standard specifically applicable to interexchange services. The applicable size standard under SBA rules is for the Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁴ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴⁵ Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴⁶ Consequently, the Commission estimates that the majority of interexchange service providers are small

³⁸ 13 CFR 121.201, NAICS code 517110.

³⁹ See Trends in Telephone Service, at Table 5.3.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ 13 CFR 121.201, NAICS code 517110.

⁴⁵ See Trends in Telephone Service, at Table 5.3.

⁴⁶ Id.

entities that may be affected by rules adopted pursuant to the FNPRM.

26. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁴⁸ Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁴⁹ All 193 carriers have 1,500 or fewer employees and none have more than 1,500 employees.⁵⁰ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

27. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵¹ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.⁵² Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵³ Of this total, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵⁴ Consequently, the Commission estimates that the majority of

⁴⁷ 13 CFR 121.201, NAICS code 517911.

⁴⁸ Id.

⁴⁹ See Trends in Telephone Service, at Table 5.3.

⁵⁰ Id.

⁵¹ 13 CFR 121.201, NAICS code 517911.

⁵² Id.

⁵³ See Trends in Telephone Service, at Table 5.3.

⁵⁴ Id.

local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this FNPRM.

28. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁵ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.⁵⁶ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵⁷ Of this total, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.⁵⁸ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the FNPRM.

29. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁹ Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁶⁰ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that

⁵⁵ 13 CFR 121.201, NAICS code 517911.

⁵⁶ Id.

⁵⁷ Trends in Telephone Service, at Table 5.3.

⁵⁸ Id.

⁵⁹ 13 CFR 121.201, NAICS code 517110.

⁶⁰ Id.

their primary telecommunications service activity was the provision of other toll carriage.⁶¹ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.⁶² Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

30. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁶³ Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.⁶⁴ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁶⁵ For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.⁶⁶ Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.⁶⁷ Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁶⁸ Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁶⁹ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate

⁶¹ Trends in Telephone Service, at Table 5.3.

⁶² Id.

⁶³ 13 CFR 121.201, NAICS code 517210.

⁶⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging,” available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517211&search=2002%20NAICS%20Search>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications,” available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002%20NAICS%20Search>.

⁶⁵ 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁶⁶ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

⁶⁷ Id. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

⁶⁸ Trends in Telephone Service, at Table 5.3.

⁶⁹ Id.

that the majority of wireless firms can be considered small.

31. **Cable Television and other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁷⁰ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁷¹ Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 1,818 had more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the FNPRM.

32. **Cable Companies and Systems.** The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.⁷² Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁷³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁷⁴ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an

⁷⁰ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search>.

⁷¹ 13 CFR 121.201, NAICS code 517110.

⁷² See 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

⁷³ These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁷⁴ See 47 CFR 76.901(c).

additional 302 systems have 10,000-19,999 subscribers.⁷⁵ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

33. **All Other Telecommunications.** The Census Bureau defines this industry as including “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁷⁶ The SBA has developed a small business size standard for this category; that size standard is \$30.0 million or less in average annual receipts.⁷⁷ According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year.⁷⁸ Of this total, 2478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more.⁷⁹ Consequently, we estimate that the majority of these firms are small entities that may be affected by our action in this FNPRM.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. While this FNPRM seeks comment on changes to the Commission’s current regulatory fee methodology and schedule, any changes to the regulatory fee methodology will not impact the information

⁷⁵ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

⁷⁶ U.S. Census Bureau, “2007 NAICS Definitions: 517919 All Other Telecommunications,” available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁷⁷ 13 CFR 121.201, NAICS code 517919.

⁷⁸ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

⁷⁹ Id.

collection, reporting, and recordkeeping requirements. If a new fee is ultimately adopted, the Commission's current online procedures for payment of regulatory fees will apply for the collection and reporting of these fees.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant

1. Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸⁰

36. Toll free numbers allow callers to reach the called party without being charged for the call; instead the charge for the call is paid by the called party (the toll free subscriber).⁸¹ A Responsible Organization (RespOrg) is a company that manages toll free telephone numbers for subscribers. They use the SMS/800 data base to verify the availability of specific numbers and to reserve the numbers for subscribers. See 47 CFR 52.101(b). It is possible that our proposal, if adopted, would result in increasing or imposing a regulatory fee burden on small entities such as RespOrgs. The actual fee amount or financial burden, however, will be determined after comments are received and evaluated. Our proposal exempts entities that are already paying regulatory fees, such as Interexchange Carriers, but would assess fees on other Responsible Organizations that do not currently pay any regulatory fees. In addition, it is possible that many of the RespOrgs may also qualify for de minimis status if their total regulatory fee obligation is \$500

⁸⁰ 5 U.S.C. 603(c)(1)–(c)(4).

⁸¹ 47 U.S.C. 52.101(e), (f).

or less, beginning in FY 2015. The Commission seeks comment on the abovementioned proposal, including methods on how to minimize significant economic impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

37. None.

IV. ORDERING CLAUSES

38. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Further Notice of Proposed Rulemaking **IS HEREBY ADOPTED**.

39. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

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